SUPREME COURT, U. S.

NOV 9 1967

JOHN F. DAVIS, CLERK

No. 405

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

LEROY POWELL,

Appellant

vs.

THE STATE OF TEXAS,

Appellee

On Appeal From the County Court at Law No. 1 of Travis County, Texas

APPENDIX

BYRD, DAVIS, EISENBERG & CLARK

DON L. DAVIS

TOM H. DAVIS

214 Austin National Bank Bldg.

Austin, Texas 78701

November, 1967

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DOCKET ENTRIES

PROCEEDINGS OF PARTIES AND ORDERS OF COURT	DATE
A. CORPORATION COURT, CITY OF AUSTIN, TEXAS	
(1) Complaint Filed	Dec. 19, 1966
(2) Judgment Entered	Dec. 20, 1966
(3) Notice of Appeal	Dec. 20, 1966
(4) Appeal Bond Filed	Dec. 21, 1966
B. COUNTY COURT AT LAW NO. 1, TRAVIS COUNTY, TEXAS	
(1) Set for Trial	March 1, 1967
(2) Motion to Quash the Complaint Filed	April 5, 1967
(3) Hearing on Motion to Quash	April 5, 1967
(4) Order Overruling Motion to Quash Filed	April 5, 1967
(5) Statement of Facts	April 5, 1967
(6) Motion for Judgment Filed	April 5, 1967
(7) Order Overruling Motion for Judgment Filed	April 5, 1967
(8) Request for Findings of Fact and Conclusions of Law Filed	April 5, 1967
(9) Findings of Fact and Conclusions of Law Filed	April 5, 1967

(10) Judgment Entered April 7, 1967

(11) Amended Motion for New Trial Filed April 7, 1967

(12) Order Overruling Amended Motion for New Trial Filed April 7, 1967

(13) Sentence Entered April 7, 1967

(14) Notice of Appeal Filed April 7, 1967

(15) Notice of Appeal to the Supreme Court of the United States Filed June 15, 1967

C. UNITED STATES SUPREME COURT

(1) Jurisdictional Statement, Transcript and Statement of Facts Filed July 21, 1967

(2) Motion to Dismiss Filed August 10, 1967

(3) Probable Jurisdiction Noted October 9, 1967

(Caption)

MOTION TO QUASH THE COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Leroy Powell, defendant in the above entitled and numbered cause, and moves the Court to quash the complaint filed herein and as grounds therefor would show the Court as follows:

1.

The complaint charges the defendant with being drunk or being found in a state of intoxication in a public place under the provisions of Art. 477 of the Texas Penal Code.

2.

The defendant is afflicted with the disease of chronic alcoholism which has destroyed the power of his will to resist the constant, excessive consumption of alcohol; his appearance in public in that condition is not of his own volition, but a compulsion symptomatic of the disease of chronic alcoholism.

3.

Art. 477 of the Texas Penal Code is unconstitutional because it punishes the defendant for being afflicted with the disease of chronic alcoholism which is "cruel and unusual punishment" in violation of the rights and privileges guaranteed the defendant by the Eighth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, premises considered, defendant respect-

fully prays this Honorable Court to set this motion for hearing and that after hearing the evidence in support of said motion that the complaint filed herein against Leroy Powell be quashed as being based upon a statute which is unconstitutional under the Eighth and Fourteenth Amendments of the United States Constitution.

(Subscription)

[Tr. 12]

(Caption)

ORDER OVERRULING DEFENDANT'S MOTION TO QUASH

On this day came on to be heard the motion of Leroy Powell, defendant herein, to quash the complaint of charges filed herein against him and the court having considered said motion, heard the evidence offered in support thereof and the arguments on behalf of all parties, it is ORDERED, ADJUDGED AND DECREED that the motion be in all things overruled.

To all of the above action, Leroy Powell, defendant herein, in open Court duly excepted.

Order entered this 5th day of April, 1967.

/s/----------
Jerry Dellana, Judge
County Court at Law No. 1
Travis County, Texas

[Filed under separate cover]

No. 104,234

THE STATE OF TEXAS	)(	IN THE COUNTY COURT
VS.	)(	AT LAW NO. 1
LEROY POWELL	)(	TRAVIS COUNTY, TEXAS

STATEMENT OF FACTS

Before the Honorable JERRY A. DELLANA, Judge

APPEARANCES:

MR. ROBERT O. SMITH, County Attorney of Travis County, Austin, Texas,

For the State of Texas.

MR. DON DAVIS, of the firm of Byrd, Davis, Eisenberg & Clark, Austin, Texas,

For the Defendant.

BE IT REMEMBERED that on the 5th day of April, 1967, the same being one of the regular days of the April, 1967, Term of the County Court at Law No. 1 of Travis County, Texas, came on to be heard the above entitled and numbered cause, whereon the following proceedings were had.

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WEDNESDAY, APRIL 5, 1967

3:45 P.M.

THE COURT: Are we ready to proceed on the trial of the merits?

MR. SMITH: The Defendant will come forward and be arraigned.

THE COURT: You are Leroy Powell?

THE DEFENDANT: Yes, sir.

THE COURT: In Cause No. 104,234 you are charged with being drunk in a public place. How do you wish to plead, guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: All right, Mr. Smith.

MR. SMITH: The State of Texas, County of Travis, City of Austin. In the name and by the authority of the State of Texas, I, the undersigned affiant, do solemnly swear that I have good reason to believe, and do believe, that one Leroy Powell on or about the 19th day of December, 1966, did, before the making and filing of this complaint, within the incorporated limits of the City of Austin in Travis County, Texas, was then and there found to be in a state of intoxication in a public place that is situated, to-wit: 2000 block Hamilton, a public street therein situated. Against the peace and dignity of the State." Signed, B. Mauldin, Affiant.

"Sworn to and subscribed before me this the 19th day of December, 1966, J. C. Barnett, Jr., Notary Public, Travis County, Texas, Corporation Court, City of Austin, Texas."

THE COURT: To which complaint you plead?

THE DEFENDANT: Not guilty.

THE COURT: All right. You may proceed. Call your first witness, Mr. Smith.

STATE'S DIRECT EVIDENCE

WILLIAM R. MAULDIN,

called as a witness in behalf of the State, being duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Smith:

Q Please state your full name and address for the record, please, sir?

A William Robert Mauldin, 5207 Kings Highway, Austin.

Q And are you a police officer with the City of Austin, Travis County, Texas?

A I am.

Q How long have you been with the Police Department as an officer?

A Approximately eight months.

Q Were you so employed on or about the 19th day of December,

1966?

A I was.

Q Now, in your experience as a police officer, have you had occasion to see people in a state of intoxication?

A I have.

Q Are you familiar with the smell of alcohol and the systematic body and physical gestures that a person under the influence of alcohol has?

A I am.

Q On the 19th day of December, 1966, did you go to the 2000 block of Hamilton Street here in the City of Austin, Travis County, Texas?

A I did.

Q At that place did you observe the defendant, Leroy Powell?

A I did.

Q Is he the same person that is seated herein the courtroom behind his attorney, Mr. Davis?

A Yes, he is.

Q Did you have a chance to talk to him and observe him at that time and place?

A I did.

Q Do you have any opinion, based on your experience as a police officer, as to his state of intoxication or non-intoxication at that time and place?

A Yes, he was very intoxicated.

Q Did he have the smell of alcoholic beverages on his breath?

A He smelled strongly of alcohol, his speech was slurred and he staggered when he walked.

Q Was the place that you saw him in the 2000 block of Hamilton Street in Austin, Travis County, Texas, a public place?

A It was.

MR. SMITH: Pass the witness.

CROSS EXAMINATION

Questions by Mr. Davis:

Q Officer Mauldin, when you arrived on the scene and found the defendant, Leroy Powell, was he engaged in any fighting?

A No, he wasn't.

Q Was he being loud or boisterous?

A No.

Q I believe you stated that he staggered when he walked?

A Yes, he did.

Q And that he smelled of alcohol?

A Yes.

Q Was there any other reason for you to believe that he was intoxicated except his condition in staggering and smelling of alcohol?

A No.

Q I take it from what you have said that he made no overt act of violence?

A No.

Q Did he resist being arrested?

A No.

Q Was he cooperative?

A Yes.

MR. DAVIS: I believe that's all. Thank you.

MR. SMITH: No further questions.

THE COURT: You may step down, Officer.

MR. SMITH: The state rests, Your Honor.

STATE RESTS.

THE COURT: Do we need to keep the officer here, or may we excuse him at this time?

MR. SMITH: That's fine.

MR. DAVIS: I have no objection.

THE COURT: All right, Mr. Davis, you may proceed.

DEFENDANT'S EVIDENCE

MR. DAVIS: The Defendant calls as its first witness Dr. David Wade.

DR. DAVID WADE, M.D.,

called as a witness in behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Davis:

Q Would you state your name, please, sir?

A Dr. David Wade.

Q What is your address, sir?

A My home address is 2007 Balcones Drive here in Austin. My office is located at No. 3B Medical Arts Square.

Q Doctor, do you hold a Bachelor's Degree?

A I do.

Q Where was that obtained?

A At the University of Arkansas.

Q And what type of degree is that?

A It is a degree in Biological Sciences.

Q How many years of study did that require, Doctor?

A Four years.

Q Doctor, do you hold an M.D. Degree?

A I do.

Q Where was that obtained, sir?

A At the University of Arkansas.

Q How many years of study did that require?

A Four years.

Q Following your M.D. Degree, Doctor, did you take an internship.

A I did.

Q And where was that taken?

A. At St. Vincent's Infirmary, Little Rock, Arkansas.

Q How many years was that?

A One year.

Q What type of internship was that, Doctor?

A A general rotating internship.

Q Following that have you taken any advanced training?

A I have.

Q What is that, sir?

A I took three years psychiatric residency at the University of Texas Medical Branch at Galveston in the Galveston State Psychopathic Hospital.

Q Would you give me a description of that medical specialty?

A The specialty of psychiatry involves the diagnosis and treatment of mental and nervous disorders.

Q All right, sir. Are there American Board certification requirements for obtaining that distinction, sir?

A An individual, after completing a residency of not less than three years and having two years additional experience may apply to the American Board of Neurology and Psychiatry for certification.

Q And are you certified on that basis?

A I am.

Q Is that an honorary certification or is that an earned certification?

A That is an earned certification. You take an examination that is conducted by the American Board of Psychiatry to determine your qualifications and the extent of your knowledge; and if you pass this, you are certified.

Q All right. Are you licensed to practice in Texas, Doctor?

A I am.

Q And is your license on file?

A It is, in Travis County.

Q Doctor, what hospitals are you affiliated with?

A I am affiliated with St. Jude's Oak Ridge Hospital which is a private psychiatric hospital. I am the Chief of Staff at that hospital. I am on the staffs of Seton Hospital, St. David's Hospital, Brackenridge Hospital and Holy Cross Hospital, all here in Austin. In addition, I am the psychiatric consultant to the Veterans Administration Hospital in Kerrville, and I am on the consulting staff at the Austin State Hospital.

Q Briefly describe what type of hospital St. Jude's Oak Ridge Hospital is, please, sir?

A It is a private hospital for the care and treatment of all types of nervous and mental disorders.

Q All right, sir. Does that hospital take patients who are alcoholics?

A It does.

Q Approximately what percentage would you say the hospital devotes of its time to the treatment of alcoholics?

A Approximately ten per cent of the beds at St. Jude's Hospital are occupied by individuals with drinking problems, problems of alcoholism.

Q Doctor, are you not also, or were you not also, cofounder of a branch of the Yale School for Alcoholic Study at Texas Christian University?

A I was.

Q I believe you were also former chief-of-staff at the Austin State Hospital, weren't you?

A No. I have been superintendent of two of the State institutions, but I was never on the active staff at Austin State Hospital.

Q All right, sir. Are you a member of the American Medical Association?

A I am. I am a fellow in the American Medical Association.

Q And in the Texas Medical Association?

A I am.

Q Have you ever held any offices in either of those organizations?

A I have been president of the Texas Medical Association,

and I was on the Board of Counselors of the Texas Medical Association for a term of nine years.

Q Have you ever been associated with the Austin Council on Alcoholism?

A I have. A number of years ago I was a member of this council.

Q Do you participate in lecturing and authoring on the subject of alcoholism?

A I do, quite frequently.

Q Have you traveled to various institutions to observe new treatment techniques on alcoholism?

A I have.

Q How many years of practical experience have you had, Doctor, in the treatment of alcoholics?

A I started in the field of psychiatry in 1939 in my residency, and I have continued in this field since that time; and I have been especially interested in the problem of alcoholism throughout the entire time that I have been in this work.

Q Doctor, could you tell me how the American Medical Association defines "alcoholics"?

A The American Medical Association has defined "alcoholics" as: "Those excessive drinkers whose dependence on alcohol has attained such a degree that it shows a noticeable disturbance or interference with their bodily or mental

health, their interpersonal relations, and their satisfactory social and economic functioning."

Q Would you explain the phrase, please, sir, "shows a noticeable disturbance or interference with their bodily or mental health"?

A The excessive ingestion of alcohol causes a physical and a mental deterioration if it is carried on over a number of years.

Q All right, sir. Are you acquainted with an organization known as the National Council on Alcoholism?

A I am.

Q What basically is their function?

A The National Council on Alcoholism is one of those health related organizations similar to the American Association for Tuberculosis—I believe that's the American Tuberculosis Association, the American Cancer Society, and the American Heart Association. They are private organizations made up of laymen and physicians who have a special interest in the study of all phases of the disease of alcoholism.

Q All right, sir. How does the National Council on Alcoholism define the term "chronic alcoholic"?

A This association has adopted a definition which goes as follows: "A person who is an alcoholic is a person who is powerless to stop drinking and whose drinking seriously

alters his normal living pattern."

Q Would you explain that definition briefly for us, please, sir?

A This takes into account the fact that the individual who is afflicted with this disease has a compulsion to drink and he is unable to defy this compulsion. When he is seized with a compulsion to drink, he will go to all ends to attempt to get alcohol to drink. It also takes into account that the excessive and long-time ingestion of alcohol does alter his normal living patterns, both mentally and physically.

Q Doctor, can the ingestion of alcohol then be addicting?

A The medical profession kicks around the definition of addiction and makes a fine distinction between the words "addiction" and "habituation." There is some disagreement in the comparison as to whether alcohol as a substance has actual addicting qualities. By the use of the term "addiction," the individual is being said to have had bodily changes which require his continued use of alcohol or of the substance.

The term "habituation" as used by medicine indicates not a physical dependence on the substance but a mental dependence on the substance. There are some groups in medical circles who feel that alcohol is actually addicting, and there are other groups who insist

that it is simply habituating.

Q At any rate, I take it from what you have said that a chronic alcoholic does become an involuntary drinker?

A That is correct. He is powerless not to drink.

Q So he loses his self-control over his drinking?

A That is correct.

Q Is it correct to say that a chronic alcoholic suffers from a disease?

A It is. Alcoholism is considered as a disease.

Q Can a chronic alcoholic resist the constant, excessive consumption of alcohol?

A No.

Q Does alcohol ingestion have an effect on the nervous system and brain?

A It does.

Q What effect does it normally have?

A Its effect should be classified in two different categories. Its immediate effect is that it causes a loss of mental control and a loss of ability to test reality. The individual is said to be intoxicated. This word stems from the word "toxic" which, in medical language, means that it has in some way interfered with the normal metabolism of the body. So that the immediate effect is one of intoxication. If alcohol is consumed for a long enough period of time, the individual develops another

acute brain condition which is known as delirium tremens in which they have hallucinatory experiences. That is, they see and hear things that are not present. They also have a tremor, a gross tremor, of their hands and body which is due to abnormal stimulation of the nerves.

After a long period of the use of alcohol, the individual develops actual brain damage that is the result of destruction of brain cells. These individuals develop mental symptoms which are permanent and irreversible. They usually consist of shallowness of the thought processes, and artificial feeling of well being that is constant but is occasionally expressed by querulousness, faulty judgment and the dilapidation in their sense of personal pride.

Q Doctor, once a person is afflicted with this disease of chronic alcoholism, would his appearance in public in a state of intoxication be voluntary or involuntary on his part?

A This would be an involuntary thing on his part.

Q All right. Would such a public appearance be symptomatic of the disease of chronic alcoholism?

A It could be.

Q In fact, Doctor, from what you have said, I believe the disease of chronic alcoholism manifests itself as a disorder of behavior at times, does it not?

A The ingestion of alcohol does alter the individual's ability to control his behavior. He loses his sense of values and his sense of judgment and would frequently, because of this, exhibit himself in public, whereas if he were not an alcoholic or not so afflicted, his judgment would be such that he would be willing to stay, would prefer to stay, at home.

Q All right, sir. Can a chronic alcoholic be medically treated and returned to society as a useful citizen?

A We believe that it is possible to treat alcoholics, and we have large numbers of individuals who are now former alcoholics. They themselves would rather say that their condition has been arrested and that they remain alcoholics, that they are simply living a pattern of life, through the help of medicine or whatever source, that enables them to refrain from drinking and enables them to combat the compulsion to drink.

Q Doctor, does the American Medical Association consider the problem of chronic alcoholism to be one of national public concern?

A The American Medical Association does so consider alcoholism.

Q Doctor, in 1966 did the American Medical Association's House of Delegates adopt certain recommendations with regard to the hospitalization of alcoholics?

A Yes, in 1956 they did.

Q I believe it was '66, wasn't it, 1966?

A Perhaps so. Yes, they adopted them on two occasions, in 1956 and again in 1966.

Q Yes. Doctor, why were these recommendations made in 1966?

A These recommendations were made, according to the statement of the American Medical Association, and I quote from their statement, "because alcoholism is a disease that merits the serious concern of all members of the health professions."

Q Doctor, what were these recommendations?

A The recommendations were as follows:

"1. That state and county medical societies establish liaison and work with hospital medical staffs and with state and local hospital associations to implement the statement that was made in 1956.

"2. That the 1956 statement be submitted to the Joint Commission on Accreditation of Hospitals with the request that it give all possible assistance in implementing the statement.

"3. That in those hospitals which do not admit patients with the diagnosis of alcoholism, the governing board, administration and medical staff consider feasible means for providing for such admissions.

"4. That in those hospitals not admitting such patients, hospital medical staffs be encouraged to review in the past year the charts where alcoholism might have been an admitting factor, and that if so, the hospital medical staff and governing authorities be encouraged to take a more realistic approach to the admission and handling of these patients.

"5. That insurance companies and prepayment plans be encouraged to remove unrealistic limitations on the extent of coverage offered for the treatment of alcoholism, recognizing that alcoholism is a chronic illness where medical supervision may be essential."

Q Dr. Wade, have you had occasion to observe and interview the Defendant, Leroy Powell?

A I have.

Q Doctor, on that occasion did you take a history of his drinking problem?

A I did.

Q Would you give me at this time what that history was, please, sir?

A This man has a history of excessive drinking dating back to his early years. In the early years, he consumed all forms of alcohol but in later years has confined himself almost wholly to the consumption of wine and beer. He does not drink what he terms now as hard liquor.

He rarely passes a week without going on an alcoholic binge. His consumption of alcohol is limited only by his finances, and when he is broke, he makes an effort to secure alcohol by getting his friends to buy alcohol for him.

He has a pattern that is fairly typical of most alcoholics. He goes out and buys a bottle of wine with the expressed idea in his mind that this is all he is going to drink and he is going to be up and ready to go the next day, but it never proves so. By the time he has bought as much fifty-cent a bottle wine as he can afford, he is usually passed out in some joint or out on the sidewalk.

During the entire time that he has been drinking in such a manner, he has never engaged in any activity that is destructive to society or to anyone except himself. There have been no crimes of violence, no criminal acts, according to the history that he gave me other than his being in the public drunk. He has been arrested some sixty to seventy-five times, and occasionally he is able to get out. As a general rule, he is fined for being drunk in a public place and lays out his fine in jail.

During the entire time that he has had this drinking problem, this man has not received any medical

treatment or any psychiatric treatment for his drinking problem. According to the history, he has never been sent to the State Hospital nor has he been referred to Alcoholics Anonymous.

Q Doctor, based upon the history he gave you and your observation and interview with Leroy Powell, were you able to reach any conclusions?

A I was.

Q Would you give those to me, please?

A It was my conclusion that Leroy Powell is an alcoholic and that his alcoholism is in a chronic stage.

Q In other words, he is a chronic alcoholic?

A He is a chronic alcoholic.

Q Doctor, would Leroy Powell's appearance in public in a state of intoxication be voluntary?

A No. No, by the time he has reached this point, he is not able to control his behavior, and he has reached this point because he has an uncontrollable compulsion to drink.

Q In your opinion then, I take it from what you have said, I take it that Leroy Powell does not have the willpower to resist the constant excessive consumption of alcohol?

A He does not have the willpower nor has he been given medical treatment to enable him to develop this willpower.

Q Doctor, from a medical standpoint, is a chronic alcoholic

going to be rehabilitated by simply confining him in jail without medical attention?

A No.

Q Would putting a chronic alcoholic in jail operate to lessen his desire for alcohol when he is released?

A No.

Q Would imposing a monetary fine on a chronic alcoholic operate to lessen his desire for alcohol?

A No.

MR. DAVIS: I believe that's all. Thank you.

CROSS EXAMINATION

Questions by Mr. Smith:

Q Dr. Wade, in the course of your examination, did you determine whether or not this man knows the difference between right and wrong?

A I feel that when he is not intoxicated he does.

Q And at the time he is not intoxicated, he knows the difference between right and wrong and is able to appreciate the nature and consequences of his act?

A I believe that is correct.

Q Now, at the time he is sober, do you think that he has a realization of the cycle that he would go through if he started drinking? In other words, one bottle of wine, two bottles of wine, three bottles of wine and then pass

out?

A No, I don't believe he has. It has been my experience that each alcoholic wakes up on the world from each drunk with the full feeling and resolution in his heart that he is going to be able to drink from now on, and they seem to believe that this time is going to be different, that they are only going to have this one or two drinks, and they are going to quit this time. I think they believe that.

Q But at the time that he takes the first drink from a sober condition, would you say that is a voluntary exercise of his will?

A Yes—I would like to answer that question, "Yes." But I would like to say that we must take into account the fact that these individuals have a compulsion, and this compulsion, while not completely overpowering, is a very strong influence, an exceedingly strong influence, and this compulsion coupled with the firm belief in their mind that they are going to be able to handle it from now on causes their judgment to be somewhat clouded. Again, let me reiterate that the first answer is, "Yes."

Q Could you distinguish between this type of initial compulsion from that of a compulsive eater or any other type of compulsion?

A It is the same type of compulsion. There is no basic

difference between the types of compulsion.

Q But at the time the first drink is taken which brings on this chain reaction that you say he is uncontrollable, at that time the person, this defendant, would know the difference between right and wrong and be able to know and appreciate the consequences of his taking a further drink?

A He would.

MR. SMITH: I have no further questions.

REDIRECT EXAMINATION

Questions by Mr. Davis:

Q Doctor, by the same token, the defendant does not achieve a state of intoxication by one drink generally, does he?

A This is correct.

Q And it is only after the involuntary compulsion to continue drinking elapses that he achieves the state of intoxication; is that correct?

A This is correct.

MR. DAVIS: I believe that's all. Thank you.

MR. SMITH: No questions.

THE COURT: All right, Doctor, you may step down.

May we excuse the doctor at this time?

MR. DAVIS: Yes, Your Honor.

MR. SMITH: That's fine.

THE COURT: All right. Call your next witness.

MR. SMITH: The defendant calls as its next witness Lt. Nathan Darby.

DIRECT EXAMINATION

Questions by Mr. Davis:

Q Would you state your name, please?

A Lt. Nathan Darby.

Q And what is your address?

A 810 Blanco Street, Austin, Texas.

Q What is your employment?

A I am a lieutenant in charge of the Identification Section, Austin Police Department.

Q In what capacity are you employed with the Austin Police Department?

A I am lieutenant in charge of the Identification Section.

Q In your capacity as a lieutenant in charge of the Identification Section, do you have possession, custody or control of the arrest record of the defendant, Leroy Powell?

A Yes.

MR. DAVIS: Will you mark this as Defendant's Exhibit 1, please?

(Whereupon the record above referred to was identified as Defendant's Exhibit No. 1.)

Q Lt. Darby, I hand you what has been marked as Defendant's Exhibit 1. Can you identify that for me, please, sir?

A They are Xerox copies of the arrest sheets that are on file in the Identification Section of the Austin Police Department.

Q Lt. Darby, do you know offhand how many arrests are on record with the Police Department for Leroy Powell?

A I would say there are approximately seventy-three.

Q All right, sir. Now, turning your attention to the first page of the arrest sheet, it shows the arrest for December 19, 1966. What was he arrested for on that occasion?

A Drunk.

Q And the arresting officer was who?

A Mauldin.

Q I believe under the facts of the arrest it states, "This subject was in a drunken condition, smelled strongly of alcoholic beverages, staggered when walking, speech impaired." Is that correct?

A That's correct.

Q All right, sir. Now, turning your attention to page 2 of the defendant's Exhibit 1, the arrest sheet shows an arrest for November 3, 1966; is that correct?

A That's correct.

Q And what was that arrest for?

A Drunk.

Q And I believe under the facts of the arrest it states, "Observed subject down at 11th and Chicon. His speech was slurred and he smelled strongly of alcoholic beverage. He staggered when walking." Is that correct?

A Yes, correct.

Q All right. Now, again on page two of Defendant's Exhibit 1, there is an arrest of the defendant for September 27, 1966. What was that arrest for?

A Drunk.

Q And I believe under the facts of the arrest it states, "This subject was observed in a very drunken condition. Subject smelled strongly of alcoholic beverages, staggered when walking, speech incoherent." Is that correct?

A That's correct.

Q All right, sir. Now turn to page 3 of the Defendant's Exhibit 1, and I note that on August 29, 1966, the defendant was again arrested; is that correct?

A Correct.

Q And what was the arrest for?

A Drunk.

Q Now, under the facts of the arrest it states, "Above subject was observed staggering in the 1200 block of Poquito. Subject smelled strongly of alcoholic beverages, eyes bloodshot and speech confused." Is that correct?

A Correct.

Q All right, sir. Now, I believe on the same page 3 there is an arrest sheet for an arrest made on August 20, 1966; is that correct?

A Yes.

Q And what was that arrest for?

A Drunk.

Q I believe under the facts of the arrests it states, "Subject asleep in the 400 block of East 6th. Subject staggered, speech blurred, smelled strongly of alcoholic beverages, eyes bloodshot and dilated." Is that correct?

A That's correct.

Q Lt. Darby, I believe that is all the arrests shown in your record here in the City of Austin for his being drunk in 1966; is that correct?

A That's correct.

Q And I believe there are five arrests for being drunk?

A Yes.

Q All right, sir. I take it, just going through these, that all the arrests shown in this Defendant's Exhibit 1 are for being drunk; is that correct?

A All for being drunk—no. That's sort of a technical question.

MR. DAVIS: Well, will you mark this, please?

(Whereupon Defendant's Exhibit No. 2 was identified by the reporter.)

Q Lt. Darby, I hand you what has been marked as Defendant's Exhibit 2. Can you identify that for me, please, sir?

A This is what we call a transcript of the record. It more or less consolidates the arrests by dates.

Q Is that a summation of the arrests as shown in Defendant's Exhibit 1?

A That's correct.

Q All right, sir. Out of the seventy-three arrests enumerated in the arrest sheet, how many arrests were made for an offense other than being drunk?

A On March 21, 1951, there was an arrest for disturbing the peace, and I would assume that the other arrests would be for drunk from all indications in looking over this transcript here.

MR. DAVIS: Your Honor, the defendant offers Defendant's Exhibits Nos. 1 and 2 into evidence.

THE COURT: Any objections?

MR. SMITH: No objection, Your Honor.

THE COURT: They will be admitted into evidence.

(Whereupon Defendant's Exhibits Nos. 1 and 2 were received in evidence, and said exhibits appear at pages —— and —— hereof.)

Q (by Mr. Davis) Lt. Darby, does the Austin Police Department have any record of the number of times Leroy Powell has been arrested for being drunk in any of the surrounding

counties?

A The answer to that question would be, "Yes."

Q Are they shown on Defendant's Exhibits 1 and 2?

A There are none shown. All are Austin arrests.

Q At any rate, based upon the information contained in Defendant's Exhibits 1 and 2, you have no record of any arrests that might have been made of Leroy Powell for being drunk in any of the surrounding counties in the State.

A None.

Q And I take it from what you have said that you wouldn't be in a position to say how many times he may have been arrested in any other county in the State?

A I didn't understand the question.

Q Excuse me. I take it from what you have said that you would not be in a position to tell me how many times Leroy Powell may have been arrested for being drunk in another county within the State of Texas?

A From the policy and procedure of the Department, there is no indication that he has ever been arrested outside of Austin, Texas.

MR. DAVIS: All right. I believe that's all.

THE COURT: Do you have any questions, Mr. Smith?

MR. SMITH: No questions.

THE COURT: You may step down. Thank you.

MR. DAVIS: I call Leroy Powell, the defendant, to testify in his own behalf.

LEROY POWELL,

the defendant, being duly sworn, testifed as follows:

DIRECT EXAMINATION

Questions by Mr. Davis:

Q Would you state your name, please, sir?

A Leroy Powell.

Q What is your address?

A 2104 East 12th, Austin.

Q Are you married?

A Yes, sir, I am.

Q Do you have any children?

A One daughter.

Q And you are the defendant in this case, are you not?

A Yes, sir.

Q What is your age?

A Sixty-six.

Q Where do you work, Mr. Powell?

A I work at 302 Congress Avenue, George Davis' Tavern.

Q What type of work do you do there?

A I shine shoes.

Q How long have you worked at George's Tavern?

A Well, I can remember about 1956 or '57.

Q You have worked there since 1956 or '57?

A Yes, sir.

Q All right, sir. Can you do heavy work?

A No, sir.

Q Why is that?

A Well, on account of I got hurt here when I was employed by the City of Austin in 1955.

Q What type of injury was that?

A I hurt my back.

Q How long have you been drinking intoxicating beverages?

A Well, let's see—I believe I started to drinking, which I did, in 1925.

Q What did you drink at the time you first started drinking?

A Wine.

Q How often do you drink?

A Well, I drinks wine every day.

Q How often do you get drunk?

A About once a week.

Q You get in a state of intoxication about once a week?

A Yes, sir.

Q Prior to this time, have you ever been arrested for being drunk?

A Do I understand you now?

Q Prior to this time, have you ever been arrested for being

drunk?

A No, sir. I've been pretty lucky, but I was drunk though. But I haven't been arrested, Do I understand you, sir?

Q I don't think you did. Have you ever been arrested before for being drunk?

A Yes, sir, many times.

Q Approximately how many times would you say?

A Oh, I guess around about a hundred times.

Q Do you usually get fined when you get arrested?

A Yes, sir.

Q What do you usually have to pay for a fine?

A Well, down in Bastrop County, it's $25.00 down there, and it's $20.00 up here.

Q What do you do when you get drunk?

A Oh, most of the time I go to sleep.

Q Where do you go to sleep?

A Well, mostly in public places, the sidewalk.

Q Do you fight?

A No, sir.

Q Do you make a loud racket?

A No, sir.

Q Do you disturb the peace?

A No, sir, I don't.

Q Or commit any acts of violence?

A No, sir.

Q Do you pretty much mind your own business?

A Yes, sir.

Q Would you like to be cured of your drinking problem?

A Yes, sir.

Q Do you have any money to pay a doctor to treat you for this problem?

A No, sir.

Q How much money do you make a week?

A Oh, right around about twelve dollars a week.

Q Do you use that money to buy groceries with?

A No, sir.

Q Do you take it home and give it to your wife to support your family?

A No, sir.

Q What do you use the money for?

A Drinking.

Q Just to buy more wine?

A Yes, sir.

Q Mr. Powell, have you ever been able to stop drinking?

A No, sir.

Q Once you take a drink, are you able to control how much liquor you consume?

A No, sir, one drink calls for another one.

Q Do you always know where you after you start drinking?

A No, sir, not all the time.

Q Do you consider yourself to be a chronic alcoholic?

A Yes, sir.

Q Have you ever been turned down for a job because of your drinking problem?

A Yes, sir.

Q Can you remember any specific places?

A Yes, sir. I had an application in for a school, for a porter, and that was one of the cause that they wouldn't take me; and then I had an application in up there at the Capitol, and that was one reason up there.

Q I take it from what you have said you made an application at the Austin Independent School District?

A Yes, sir.

Q And they found out about your drinking problem and wouldn't hire you; is that correct?

A Yes, sir.

Q And the same thing happened at the State Office Building?

A Yes, sir.

Q Do you think you could get a good job and support your family if you could lick this drinking problem you have?

A Yes, sir.

Q Have you ever stopped drinking for a period of time?

A Yes, sir, I have.

Q About how long did that last?

A Well, not too long on account of I don't have the means.

Q In other words, as soon as you get enough money, you start drinking again?

A Yes, sir.

Q Have you been arrested for being drunk during the period of time that this case has been pending this trial?

A Yes, sir.

Q Where was that?

A Bastrop.

Q And that was when?

A Oh, that was before Christmas.

Q Just before Christmas?

A Yes, sir.

Q All right. Mr. Powell, are you able to control where you go after you get in an intoxicated state?

A No, sir.

Q In other words, your appearance in public in a state of intoxication is involuntary; is that correct?

A Yes, sir.

Q If you could control your movements when you are in a state of intoxication would you go into the public?

A No, sir.

MR. DAVIS: I believe that's all.

CROSS EXAMINATION

Questions by Mr. Smith:

Q Mr. Powell, do you remember being arrested on December 19, 1966?

A No, sir, I don't.

Q Do you remember waking up in jail the morning of the 19th or 20th?

A No, sir, I don't remember.

Q You don't know anything about this incident that you are on trial for?

A No, sir.

Q Where were you at Christmas, 1966?

A Well, Judge, I just couldn't remember now. I just couldn't tell you where I was.

Q But you don't remember being arrested on the 19th?

A No, sir, I don't remember.

Q Do you remember when you started drinking before the 19th?

A No, sir, I don't.

Q Do you remember talking to the officer that testified here while ago about arresting you?

A No, sir, I don't remember talking to him. In fact, I don't know where he arrested me at. I probably might have been wandering somewhere.

Q You don't remember Christmas Day, 1966?

A No, sir.

Q Do you remember Christmas Eve?

A Well, I remember Christmas Eve, I believe.

Q Do you remember when you got out of jail just before Christmas Eve?

A No, sir, I can't remember.

Q You don't know how you got out of jail?

A No, sir. I think I worked my fine out. I believe that was it. I don't know, sir. I can't remember whether I paid it out or not.

Q Or whether somebody came and appealed it for you?

A No, sir.

Q You don't recall that?

A No, sir.

Q And you don't remember when you started drinking immediately prior to the 19th?

A No, sir.

Q When did you have the last drink now, Mr. Powell?

A This morning.

Q About what time?

A Well, somewhere around about eight o'clock.

Q Right after you got up?

A No, sir, while I was working.

Q After you got to work?

A Yes, sir.

Q When was the last time you had had a drink before that

eight o'clock drink?

A Well, I hadn't had nary one before yesterday.

Q You didn't have any yesterday at all?

A Yes, sir.

Q When was the last one you had yesterday?

A Well, I don't know, sir. I just had a few of them. I just can't imagine when was the last one. Of course, I had four or five, I guess.

Q And you went home last night?

A Yes, sir.

Q And you went to bed and went to sleep?

A Yes, sir.

Q And you didn't have one today until eight o'clock?

A No, sir.

Q You took that one at eight o'clock because you wanted to drink?

A Yes, sir.

Q And you knew that if you drank it, you could keep on drinking and get drunk?

A Well, I was supposed to be here on trial, and I didn't take but that one drink.

Q You knew you had to be here this afternoon, but this morning you took one drink and then you knew that you couldn't afford to drink any more and come to court; is that right?

A Yes, sir, that's right.

Q So you exercised your will power and kept from drinking anything today except that one drink?

A Yes, sir, that's right.

Q Because you knew what you would do if you kept drinking, that you would finally pass out or be picked up?

A Yes, sir.

Q And you didn't want that to happen to you today?

A No, sir.

Q Not today?

A No, sir.

Q So you only had one drink today?

A Yes, sir.

MR. SMITH: I have no further questions, Your Honor.

REDIRECT EXAMINATION

Questions by Mr. Davis:

Q Leroy, isn't the real reason why you just had one drink today because you just had enough money to buy one drink?

A Well, that was just give to me.

Q In other words, you didn't have any money with which you could buy any drinks yourself?

A No, sir, that was give to me.

Q And that's really what controlled the amount you drank

this morning, isn't it?

A Yes, sir.

Q Leroy, when you start drinking, do you have any control over how many drinks you can take?

A No, sir.

MR. DAVIS: I believe that's all.

MR. SMITH: I have no further questions.

THE COURT: All right. You may step down, Mr. Powell.

MR. DAVIS: Your Honor, the defendant rests, and at this time would like to make a motion for judgment.

DEFENDANT RESTS.

MR. SMITH: The State rests and closes, Your Honor.

MR. DAVIS: Defendant closes, Your Honor.

EVIDENCE CLOSED.

MR. DAVIS: Comes now Leroy Powell, defendant in this case, at the close of the evidence presented against him by the State and at the conclusion of the evidence offered in his defense, but prior to announcement or entry of judgment by the Court, and moves the Court to find and enter judgment that Leroy Powell is not guilty of the offense with which he is charged, and as grounds therefor would show the Court as follows:

Defendant stands charged with being drunk or be-

ing found in a state of intoxication in a public place under the provisions of Article 477 of the Texas Penal Code. Defendant's defense to this charge is based upon the Eighth Amendment to the United States Constitution which is made applicable to the State of Texas under the due process clause of the Fourteenth Amendment of the United States Constitution and which bars the infliction of cruel and unusual punishment.

The defendant has proven that he is afflicted with the disease of chronic alcoholism which has destroyed the power of his will to resist the constant excessive consumption of alcohol, and that his appearance in public in that condition is not of his own volition but a compulsion symptomatic of the disease of chronic alcoholism; and to stigmatize him as a criminal for this act is cruel and unusual punishment in violation of the rights and privileges guaranteed the defendant by the Eighth and Fourteenth Amendments of the United States Constitution.

For all these reasons, the Defendant respectfully prays this Honorable Court to find and enter judgment that he is not guilty of the offense with which he is charged.

MR. SMITH: Your Honor, we have shown by the testimony of Dr. Wade that the man is legally sane and

knows the difference between right and wrong. We have proved by the defendant himself that he has the power to resist the first drink, and he knows the consequences of taking the first drink; and it is clear to the Court that he drinks now because he wants to drink. He can refrain from it when he comes to Court although he had rather be in a state of intoxication at other times.

We ask the Court to find the defendant guilty under the evidence before the Court and assess his punishment at at least $100.00.

THE COURT: Mr. Davis, I overrule your motion for judgment, and I find the defendant guilty and assess his punishment at a fifty dollar fine plus costs.

MR. DAVIS: Please note our exception.

REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

I, Janice M. Richards, Official Court Reporter for the County Court at Law No. 1 of Travis County, Texas, do hereby certify that the above and foregoing 42 pages constitute a full, true and correct transcript in Question and Answer form of all the evidence admitted and proceedings had in a hearing on Cause No. 104,234, styled The State of Texas vs. Leroy Powell, in the County Court at Law No. 1 of Travis County, Texas.

I further certify that the foregoing Statement of Facts, contains all objections to the admission or exclusion of evidence, the rulings of the Court thereon, and the exception reserved thereto.

Witness my hand this the 21st day of April, 1967.

Janice M. Richards
Official Court Reporter
County Court at Law No. 1
Travis County, Texas

AGREEMENT OF COUNSEL

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

We, the undersigned attorneys of record in Cause No. 104,234, styled The State of Texas vs. Leroy Powell, in the County Court at Law No. 1 of Travis County, Texas, do hereby agree that the foregoing 43 pages constitute a full, true, and correct transcript in Question and Answer form of all the testimony and proceedings had during the trial of said cause.

We further agree that the foregoing Statement of Facts contains all objections to the admission or exclusion of evidence, the rulings of the Court thereon, and the exceptions reserved.

We further agree that this record shall be filed as the Statement of Facts and Bills of Exception (except such other and further bills as may be filed) in this cause.

Dated this the 28th day of April, 1967.

Robert O. Smith, County Attorney
Representing the State of Texas

Don L. Davis
Attorney for the Defendant

CERTIFICATE OF THE COURT

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

The above and foregoing Statement of Facts, having been examined by me and found to be correct, is hereby approved and ordered filed as a statement of facts in this cause.

Dated this the 1st day of May, 1967.

Jerry A. Dellana, Judge
County Court at Law No. 1
Travis County, Texas

SUMMARY OF DEFENDANT'S EXHIBITS 1 AND 2

AUSTIN POLICE DEPARTMENT RECORDS

YEAR	ARRESTS	FINES
1949	1	$ —0—
1952	3	36.00
1953	5	60.00
1954	3	36.00
1955	5	71.00
1956	8	136.00
1957	8	146.00
1958	6	107.00
1959	6	134.00
1960	5	112.00
1961	3	39.00
1962	6	68.00
1963	5	90.00
1964	1	17.00
1965	3	51.00
1966	5	100.00
TOTAL	73	$1,203.00*

*This figure does not reflect fines imposed by the County Court at Law in those cases which were appealed.

[Tr. 13]

(Caption)

MOTION FOR JUDGMENT

COMES NOW Leroy Powell, defendant in the above entitled and numbered cause, at the close of the evidence presented against him by the State and at the conclusion of the evidence offered in his defense, but prior to announcement or entry of judgment by the court, and moves the court to find and enter judgment that Leroy Powell is not guilty of the offense with which he is charged, and as grounds therefor would show as follows:

1.

Defendant stands charged with being "drunk" or being "found in a state of intoxication" in a "public place" under the provisions of Art. 477 of the Texas Penal Code.

2.

Defendant's defense to this charge is based upon the Eighth Amendment to the United States Constitution which is made applicable to the State of Texas under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and which bars the infliction of "cruel and unusual" punishment.

3.

The defendant is afflicted with the disease of chronic alcoholism which has destroyed the power of his will to resist the constant, excessive consumption of alcohol; his appearance in public in that condition is not of his own volition, but a compulsion symptomatic of the disease of chronic alcoholism and to stigmatize him

as a criminal for this act is "cruel and unusual punishment" in violation of the rights and privileges guaranteed the defendant by the Eighth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, premises considered, defendant respectfully prays this Honorable Court to find and enter judgment that Leroy Powell is not guilty of the offense with which he is charged.

(Subscription)

[Tr. 15]

(Caption)

ORDER OVERRULING DEFENDANT'S MOTION FOR JUDGMENT

On this day came on to be heard, at the conclusion of the evidence presented against him by the State and the evidence offered in his defense but prior to announcement or entry of judgment, the Motion for Judgment of Leroy Powell, defendant herein, that he be found not guilty of the offense with which he stands charged. The Court having considered said motion and the arguments on behalf of all parties, it is ORDERED, ADJUDGED AND DECREED that the motion be in all things overruled, to which action the defendant duly excepted.

Order entered this 5th day of April, 1967.

/s/----------
Jerry Dellana, Judge
County Court at Law No. 1
Travis County, Texas

[Tr. 17]

(Caption)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In compliance with the request of Leroy Powell, defendant herein, the Court hereby files the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. That chronic alcoholism is a disease which destroys the afflicted person's will power to resist the constant, excessive consumption of alcohol.
2. That a chronic alcoholic does not appear in public by his own volition but under a compulsion symptomatic of the disease of chronic alcoholism.
3. That Leroy Powell, defendant herein, is a chronic alcoholic who is afflicted with the disease of chronic alcoholism.

CONCLUSIONS OF LAW

1. The fact that a person is a chronic alcoholic afflicted with the disease of chronic alcoholism, is not a defense to being charged with the offense of getting drunk or being found in a state of intoxication in any public place under Art. 477 of the Texas Penal Code.

Signed and Entered this 5th day of April, 1967.

JERRY DELLANA, Judge
County Court at Law No. 1
Travis County, Texas

[Tr. 19]

(Caption)

JUDGMENT

On the 5th day of April, 1967, this cause was called for trial and both parties appeared and the defendant, Leroy Powell, being represented by his attorney, Don L. Davis, announced ready for trial, and the defendant, Leroy Powell, pleaded not guilty to the information herein and waived trial by jury, and submitted the decision of the cause to the court. The court having heard the information herein read, and the defendant's plea of not guilty thereto and the evidence adduced, finds that the said defendant is GUILTY of the offense charged in the information.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the defendant, Leroy Powell, is GUILTY of the offense of being in a state of intoxication in a public place, and the Court having heard evidence on the question of punishment, fixed the punishment by payment of a fine in the amount of Fifty and no/100 ($50.00) Dollars, for which let execution issue, and the defendant is remanded to jail to await the further orders of the court, to all of which action the defendant in open court duly excepted.

Ordered Entered this 7th day of April, 1967.

JERRY DELLANA, Judge
County Court at Law No. 1
Travis County, Texas

[Tr. 20]

(Caption)

AMENDED MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Leroy Powell, defendant in the above entitled and numbered cause, and requests leave to file this his Amended Motion for New Trial, and moves the court to set aside the judgment herein entered against him on the 5th day of April, 1967, and grant him a new trial and as grounds therefor would show the court as follows:

1.

The defendant is a citizen of the United States.

2.

The Court has made and filed herein the following findings of fact:

"1. That chronic alcoholism is a disease which destroys the afflicted person's will power to resist the constant, excessive consumption of alcohol.

2. That a chronic alcoholic does not appear in public by his own volition but under a compulsion symptomatic of the disease of chronic alcoholism.

3. That Leroy Powell, defendant herein, is a chronic alcoholic who is afflicted with the disease of chronic alcoholism."

3.

The defendant has been found guilty of the offense of being drunk or being found in a state of intoxication in a public place under the provisions of Art. 477 of the Texas Penal Code.

4.

The trial court erred in finding and entering judgment herein that the defendant was guilty because the defendant is afflicted with the disease of chronic alcoholism which has destroyed the power of his will to resist the constant, excessive consumption of alcohol, the defendant's appearance in a public place in a state of intoxication was not of his own volition, but was a compulsion symptomatic of the disease of chronic alcoholism and to stigmatize him as a criminal for this act is "cruel and unusual punishment" in violation of the rights and privileges guaranteed the defendant by the Eighth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, premises considered, defendant respectfully prays this Honorable Court to set aside the judgment herein and grant him a new trial.

(Subscription)

[Tr. 22]

(Caption)

ORDER OVERRULING DEFENDANT'S AMENDED MOTION FOR NEW TRIAL

On this day came on to be heard the amended motion for new trial of Leroy Powell, defendant herein, requesting the Court to set aside the judgment herein rendered against him on the 5th day of April, 1967, and grant him a new trial. The Court having granted leave to file said motion and having considered said motion and the arguments on behalf of all parties, it is ORDERED, ADJUDGED AND DECREED that the motion be in all things OVERRULED, to which action the defendant in open Court duly excepted and gave notice of appeal.

Order Entered this 7th day of April, 1967.

/s/----------
Jerry Dellana, Judge
County Court at Law No. 1
Travis County, Texas

[Tr. 23]

(Caption)

SENTENCE

On this the 7th day of April, 1967, this cause being again called, the State appeared by her County Attorney and the defendant, Leroy Powell, appeared in person and by his attorney, Don L. Davis, for the purpose of having the sentence of the law pronounced against him in accordance with the findings of the Court heretofore entered in this cause. Wherefore, the Court proceeded, in the presence of the said defendant, to pronounce sentence against him as follows:

It is the ORDER of this Court that the said defendant, Leroy Powell, who has been adjudged guilty of the offense of being in a state of intoxication in a public place be and is hereby sentenced to pay a fine of Fifty and no/100 ($50.00) Dollars, to which action the defendant in open court duly excepted.

Entered this the 7th day of April, 1967.

/s/----------
Jerry Dellana, Judge
County Court at Law No. 1
Travis County, Texas

[Tr. 25]

(Caption)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Leroy Powell, defendant in the above styled and numbered cause, hereby appeals to the Supreme Court of the United States from the final judgment of the County Court at Law No. 1 of Travis County, Texas, entered herein on April 7, 1967.

This appeal is taken pursuant to 28 U.S. Code, § 1257(2).

Appellant was convicted of the offense of being in a state of intoxication in a public place, in violation of Art. 477, Texas Penal Code; was sentenced to pay a fine of $50.00; and is presently enlarged on bail pending final disposition of this appeal.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint
2. Motion to Proceed In Forma Pauperis
3. Order Granting Motion to Proceed In Forma Pauperis
4. Application for Appointment of Shorthand Reporter
5. Order Appointing Shorthand Reporter
6. Motion to Quash the Complaint
7. Order Overruling Defendant's Motion to Quash
8. Motion for Judgment

9. Order Overruling Defendant's Motion for Judgment
10. Request for Findings of Fact and Conclusions of Law
11. Findings of Fact and Conclusions of Law
12. Judgment
13. Amended Motion for New Trial
14. Order Overruling Defendant's Amended Motion for New Trial
15. Sentence
16. Statement of Facts (Under Separate Covers):
    (A) Hearing on Motion to Quash Complaint
    (B) Trial on the Merits
17. Notice of Appeal
18. This Notice of Appeal to the Supreme Court of the United States
19. Clerk's Certificate

III. The following question is presented by this appeal:

Whether the conviction of a chronic alcoholic for being in a state of intoxication in a public place violates the Eighth and Fourteenth Amendments to the United States Constitution.

(Subscription and proof of service)

AGREEMENT AS TO APPENDIX

The parties hereby stipulate and agree that the foregoing 60 pages shall constitute the contents of the APPENDIX to be filed in the above-entitled and numbered cause.

BYRD, DAVIS, EISENBERG & CLARK

DON L. DAVIS

TOM H. DAVIS

214 Austin National Bank Bldg.

Austin, Texas 78701

By ----------

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By ----------

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